

No. 12,228

**In the United States Court of Appeals
for the Ninth Circuit**

ESTATE OF ABRAHAM KOSHLAND, DECEASED, JESSE
KOSHLAND, EXECUTOR, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

*PETITION FOR REVIEW OF THE DECISION OF THE TAX
COURT OF THE UNITED STATES*

BRIEF FOR THE RESPONDENT

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OPINION BELOW

The opinion of the Tax Court (R. 36-57) is reported
in 11 T. C. 904.

JURISDICTION

This case involves federal estate taxes. The Commissioner's notice of deficiency (R. 11-15) was mailed to the taxpayer on or about April 7, 1947 (R. 4, 11, 28). Within 90 days thereafter, and on May 5, 1947, the taxpayer filed his petition with the Tax Court for redetermination under Section 871(a) of the Internal Revenue Code. (R. 1.) The decision of the Tax Court that there is a deficiency in estate tax in the amount of \$33,119.49 was entered on February 25, 1949. (R. 3, 57-58.) The case is brought to this Court by petition for review filed

March 21, 1949 (R. 3, 58-62), pursuant to the provisions of Section 1141(a) of the Internal Revenue Code, as amended by Section 36 of the Act of June 25, 1948.

QUESTION PRESENTED

Whether the Tax Court correctly held that the value of the remainder interest in a trust should be computed in accordance with the applicable regulations (Treasury Regulations 105, Sec. 81.10(i)).

STATUTE AND REGULATIONS INVOLVED

These are set out in the Appendix, *infra*.

STATEMENT

The facts found by the Tax Court so far as material hereto may be summarized as follows:

The decedent died on April 15, 1944, and his estate is in the process of administration in California. The estate tax return of the taxpayer estate was filed with the Collector of Internal Revenue for the First District of California. At the time of his death decedent was 78 years old, and his wife, Estelle W. Koshland, who was still living at the time this case was tried, was 66 years old. (R. 38.)

On December 26, 1922, the decedent created a trust by transferring certain securities, which had a cost to him of \$290,596, to Jesse Koshland and Stanley H. Sinton (a nephew) who declared themselves trustees of this property in a declaration of trust, the pertinent provisions of which read as follows (39, 41):

Second: For and during the lifetime of Estelle W. Koshland of said Boston the income of this trust less proper charges and deductions including the payment of such taxes, municipal, state or Federal as may be levied thereon, shall be paid over unto her semi-annually, quarterly or oftener for

and during her lifetime and upon her death then said income shall be paid over unto Abraham Koshland * * *.

Fourth: At any time or during any period when no income is received, or where the income received is less than Fifteen Thousand (15,000) Dollars in any year, the Trustees may, upon the application of any beneficiary, apply and expend such part of the principal of the fund as may be necessary:

(a) To provide either the said Estelle W. Koshland or the said Abraham Koshland with an income of Fifteen Thousand (15,000) Dollars for such year; * * *

On December 26, 1923, decedent, for the first and only time, amended this trust. (R. 43.) The amendment cancelled Articles 7 and 8 of the original declaration of trust and substituted therefor a new provision which reads in part as follows (R. 43):

7. Power is hereby reserved during the lifetime of the said Abraham Koshland and given to the said Abraham Koshland and Estelle W. Koshland with the approval of the Trustees hereof at any time in the uncontrolled discretion of the said Abraham Koshland and Estelle W. Koshland to amend this declaration of trust, * * *.

All of the income of this trust has been paid year by year to Estelle W. Koshland. Prior to 1931 this income was in excess of \$15,000 annually. Since then, it has fluctuated between \$10,000 and \$14,000. Although she has not made any application to the trustees for the payment from trust principal of any amount necessary to bring her income to the sum of \$15,000, it was the intent of the decedent and the understanding of the trustees that she have this right; and the Commissioner conceded in his Tax Court brief that she is and was

entitled to an annual income from the trust in the amount of \$15,000. (R. 44.)

At the time of decedent's death, as well as at the time of the hearing in this proceeding (March 23, 1948) decedent's wife was in good health, and her personal physician expected her to live out her normal life expectancy. (R. 44.)

Decedent's power of amendment of the trust was unrestricted and was exercisable by him with a person not having a substantial adverse interest in the remainder (R. 44-45.)

The fair market value of the trust estate, as of the date of decedent's death, was \$231,524.64. (R. 45.)

In determining the value of the remainder interest which is includible in decedent's gross estate, the Commissioner subtracted from the value of the trust estate the value of decedent's wife's life estate, calculating this value in conformity with Table A appearing in Treasury Regulations 105, Sec. 81.10(i). This table is based upon the Actuaries' or Combined Experience Table of Mortality. (R. 45.)

This table is the result of experience of seventeen British life insurance companies covering a period from 1762 until 1837; it makes no distinction between the length of male lives and the length of female lives. (R. 45.)

Many other tables of mortality have been in widespread use. The Actuaries' or Combined Experience Table of Mortality is not now used by insurance companies in computing annuities. Insurance companies do not use annuity mortality tables in determining life insurance premiums or in calculating life insurance reserves. Annuity mortality tables reflect only the experience of insurance companies with annuitants as a class. They do not purport to reflect the general mortality experience. Annuitants, as a rule, are a self

selected group and tend to outlive the average. For the purpose of computing life insurance premiums, insurance companies use their own mortality tables based upon their individual experience. (R. 45.)

Modern experience has demonstrated that females live longer than males, and some annuity tables now do take this factor into account. (R. 46.)

The 1937 Standard Annuity Table has been used by insurance companies and by actuaries as a basis for determining annuities and life estates since 1937. The table is used for both male and female lives, except that the age of the female is taken at an age five years younger than the male life. It is one of the most current tables in use for the evaluation of annuities. (R. 46.)

The table currently used by insurance companies for purposes of reserves and the like and considered as reflecting general mortality experience is the Insurance Commissioners' 1941 Standard Ordinary Table of Mortality. This table is based upon experience in the years 1934 to 1936, with adjustment for possible epidemics and other catastrophes. (R. 46.)

Decedent's wife's expectation of life, under various mortality tables, is as follows (R. 46):

<i>Mortality Table</i>	<i>Age 66</i>
Combined Experience or Actuaries'	10.46
American Experience	10.54
Insurance Commissioners' 1941 Table..	11.01
American Annuitants'	11.95
Combined Annuity—	
Male	12.17
Female	14.52
1937 Standard Annuity—	
Male	13.81
Female	16.90

The proper factor for quarterly payments is .01488, to be multiplied by the annuity value of the

annual payments to Estate of Koshland under the trust. (R. 46-47.)

The value of the trust remainder, includible in decedent's gross estate, is \$116,973.71. (R. 47.)

The Tax Court held (R. 54-57) that in computing the value of the life interest which is to be subtracted from the value of the trust assets it was proper to use the mortality table and factor for quarterly payments in conformity with the regulations (Treasury Regulations 105, Sec. 81.10(i)).

SUMMARY OF ARGUMENT

In computing the value of the remainder interest in question, it is agreed that the value of the wife's life estate should be subtracted from the value of the trust property. The value of the trust property is not in dispute, and the area of disagreement is as to the value of the life interest which is to be subtracted.

The Commissioner evaluated that life interest in accordance with the regulations and the Tax Court correctly upheld his action. The taxpayer failed to discharge the burden of showing that the Commissioner's action was wrong or that the regulations are unsound. They should, therefore, be accepted here as they were in the Tax Court.

ARGUMENT

The Remainder Interest Here Involved Was Properly Valued in Accordance With the Regulations

This appeal involves only the question whether the remainder interest to be included in the decedent's gross estate under Sec. 811(d)(2) of the Internal Revenue Code (Appendix, *infra*), was properly valued in accordance with the regulations (Treasury Regulations 105, Sec. 81.10(i), Appendix, *infra*). In the Tax Court proceedings the taxpayer contended that the remainder interest was not includible at all but he has now aban-

tioned that contention (Br. 3, Appendix to Br., p. 1), and as above noted the only question now presented is the one as to value.

In his original determination the Commissioner computed the value of the remainder interest as follows (R. 14):

Fair market value of trust estate	
4-15-1944	\$231,524.64
Less—value of life estate held by	
Estelle Koshland: Date of birth,	
4-8-1878 — Age 4-15-1944, 66	
years	
Annual income on \$231,-	
524.64 at 4%	\$ 9,260.99
Table A factor for \$1.00	
annuity at 66	7.52476
Annuity value of an-	
nual income (7.52476	
of \$9,260.99)	\$69,686.73
Factor for quarterly	
payments	1.01488
Value of life tenancy 4-15-1944	
(1.01488 of \$69,686.73)	70,723.67
	<hr/>
Value of trust includible in gross	
estate	\$160,800.97

On brief in the Tax Court the Commissioner conceded (R. 44) that the figure for annual income payable to the wife from the trust should be increased to \$15,000 and revised his computation accordingly as follows:

Fair market value of trust estate		
4-15-44	\$231,524.64	
Less:		
Annual income	\$15,000.00	
Table A factor for \$1.00		
annuity at 66	7.52476	
Annuity value of annual		
income (7.52476 x		
15,000.00)	112,871.40	
Factor for quarterly		
payments	1.01488	
Value of life tenancy 4-15-44		
(1.01488 x 112,871.40)	114,550.93	
		<hr/>
Value of trust remainder includible		
in gross estate.....	\$116,973.71	

The Tax Court accepted that concession and computation and specifically found as a fact that the value of the trust remainder, includible in decedent's gross estate, is \$116,973.71. (R. 47.)

The computation that the Tax Court approved was based upon the Actuaries' or Combined Experience Table of Mortality which is prescribed by the regulations (Treasury Regulations 105, Sec. 81.10(i), *supra*).

The Tax Court held that the use of that table was proper and in so holding it relied upon its own prior decisions in *Estate of Hart v. Commissioner*, 1 T. C. 989; *Du Pont v. Commissioner*, 2 T. C. 246; *Affelder v. Commissioner*, 7 T. C. 1190; *Estate of Bartman v. Commissioner*, 10 T. C. 1073, which are all to the same effect.

Thus, in the *Hart* case which was not appealed the Tax Court said (p. 991):

Valuation for estate or inheritance tax purposes is computed in some 17 states by the use of the Actu

aries' or Combined Experience Mortality Table, with 4, 5, or 6 percent interest, and approximately 20 other states use the American Experience Table of Mortality, with interest at 5 or 6 percent. See Prentice-Hall, Inheritance and Transfer Tax Service (11th Ed.) vol. I, pp. 801-803. The life expectancy of a person aged 79 under the former table is 5.09 years; under the latter 4.8 years. In New York State the use of the Actuaries' or Combined Experience Table of Mortality, with 4 percent interest, is prescribed by statute, Tax Law, §249-v, which is binding in tax computations. See *In re Bowker's Estate*, 157 Misc. 341; 283 N.Y.S. 564.

* * *

The method of valuing the claim adopted by respondent was a proper one. "There may be better and more accurate methods, but we can not for that reason disapprove of a method long in use without evidence establishing a better one. *Simpson v. United States*, 252 U. S. 547." *F. J. Sensenbrenner*, 46 B.T.A. 713, 717-718.

It is true that in the *Raymond* case (*Raymond v. Commissioner*, 40 B.T.A. 244, affirmed on other grounds, 14 F. 2d 140 (C. A. 7th), certiorari denied, 311 U. S. 10), upon which the taxpayer relies heavily (Br. 10, 5), the Tax Court took the view that the Actuaries' or Combined Experience Table was shown to be outmoded and approved a later table called the American Annuity Mortality Table for purposes of determining the amount of the gift in that case. But as pointed out by the Tax Court in the instant case (R. 55-56), the *Raymond* case is distinguishable from the instant one because they involve different problems. In this connection the Tax Court aptly said (R. 56):

The table petitioner urges might be worthy of further consideration if our question were the cost of an annuity from a commercial insurance company. This was the underlying problem posed in

the *Raymond* case, and it was there considered proper to utilize a table that such companies were using in their annuity business. We observed in the *Bartman* case, *supra*:

* * * that insurance companies take into consideration the element of self selection in writing annuities; and that they use whatever tables are best suited for their particular needs. * * *

There is no showing here that the mortality of inheritors or donees closely resembles that of purchasers of annuity policies. In fact, contrary evidence appears in the record.

And in other Tax Court cases, the *Raymond* case has also been distinguished in similar manner. See *Estate of Hart v. Commissioner, supra*, p. 991; *Du Pont v. Commissioner, supra*, p. 257; *Affelder v. Commissioner, supra*, p. 1194; *Estate of Bartman v. Commissioner, supra*, p. 1079.

Moreover, the mortality table approved in the *Raymond* case (American Annuitants') shows a life expectancy for decedent's wife of 11.95 years which is about five years less than the figure of 16.90 years shown by the table (1937 Standard Annuity) for which taxpayer contends and in favor of which his expert witness, Mr. Waites, testified. This was noted by the Tax Court in this instant case (R. 46, 55); and the Tax Court concluded (R. 56), correctly we submit, that whatever may be the shortcomings of the table prescribed by the regulations and used here, which as above pointed out shows a life expectancy for decedent's wife of 10.46 years, still taxpayer failed to show that the 1937 table or any other table not embodied in the regulations, must be applied in this proceeding.

The mortality table which was approved by the Tax Court in the instant case has long been used for tax purposes, both state and federal. See *Estate of Hart*

Commissioner, supra; *Estate of Bartman v. Commissioner, supra*; *Affelder v. Commissioner, supra*; *Du Pont v. Commissioner, supra*; *Simpson v. United States*, 252 U. S. 547; II Paul, Federal Estate and Gift Taxation (1942), Sec. 18.19, pp. 1264-1265; also 1946 Supplement, pp. 777-779; New York Tax Law, Sec. 249-V (59 McKinney's Consolidated Laws of New York Annotated, Part 2); *Matter of Bowker*, 157 N. Y. Misc. 341, 343-344; California Revenue and Taxation Code, Sec. 13953 (Deering's California Codes, Revenue and Taxation Code). See also *Ithaca Trust Co. v. United States*, 279 U. S. 151; *Smith v. Shaughnessy*, 318 U. S. 76; *Robinette v. Helvering*, 318 U. S. 184; *Merchants Bank v. Commissioner*, 320 U. S. 256; *Henslee v. Union Planters Bank*, 335 U. S. 595; *Fidelity-Philadelphia Trust Co. v. Commissioner*, 27 B.T.A. 972, 979-980.

The question here raised is not new and while the mortality table prescribed in the regulations was originally prepared a long time ago, has been in use for many years, and has been supplanted in certain states and for some purposes, still it is so ingrained in the federal tax laws that it is believed it was properly used in the instant case.

This mortality table has long been included in the state tax regulations. See Treasury Regulations 37 (1919 ed.), Art. 20; Treasury Regulations 63 (1922 ed.), Art. 15; Treasury Regulations 68 (1924 ed.), Art. 13; Treasury Regulations 70 (1926 ed.), Art. 13; Treasury Regulations 70 (1929 ed.), Art. 13; Treasury Regulations 80 (1934 ed.), Art. 13; Treasury Regulations 80 (1937 ed.), Art. 10; Treasury Regulations 105, Sec. 1.10.

The table is also included in the gift tax regulations. See Treasury Regulations 79 (1932 ed.), Art. 19; Treasury Regulations 79 (1936 ed.), Art. 19; Treasury Regulations 108, Sec. 86.19(f).

Having stood for so long in the regulations this mortality table would seem to have attained a dignity and force akin to that of law. Cf. *Magruder v. Washington B. & A. Realty Corp.*, 316 U. S. 69; *Taft v. Commissioner*, 304 U. S. 351; *United States v. Dakota-Montana Oil Co.*, 288 U. S. 459; *Maryland Casualty Co. v. United States*, 251 U. S. 342; *Morrissey v. Commissioner*, 29 U. S. 344.

The taxpayer says (Br. 7) that the incorporation of the table into the regulations does not give it binding force, citing *Hanley v. United States*, 63 F. Supp. 7 (C. Cls.), in support of that contention. In the *Hanley* case the Court of Claims held that the 4% interest factor was too great in the circumstances there presented and took the view that a lower interest factor should be used despite the provision for 4% in the regulations. We do not need to go into the wisdom of that decision for present purposes, since there is no question as to the interest rate in the instant case. The *Hanley* case involved no question as to life expectancy such as presented here.

Taxpayer cites (Br. 8) *Estate of Denbigh v. Commissioner*, 7 T. C. 387; *Estate of Jennings v. Commissioner*, 10 T. C. 323, where the court held that the life expectancy shown by the mortality table could be reduced in case of incurable disease or other similar considerations. But whatever may be thought as to the correctness of those decisions, they are without application here where the wife was in good health. (R. 44) Accordingly the standard table should be used in valuing her life estate.

It is true that Mr. Waites, the actuary who testified for the taxpayer in this case, said that the mortality table prescribed by the regulations is obsolete. (R. 93) Waites said that he preferred the 1937 Standard A

uity Table (R. 55, 101) but it was brought out on cross examination that the 1937 table is not in general use, being used by insurance companies only for the computation of annuities (see R. 118, 125).¹ It was also brought out on cross examination (R. 119) and the Tax Court found as a fact (R. 46) that the table currently used by insurance companies for purposes of reserves and the like and considered as reflecting general mortality experience is the Insurance Commissioners' 1941 Standard Ordinary Table. This table, which is not in evidence here (R. 119) would show a life expectancy of 11.01 years for the decedent's wife (R. 46, 121). And another table which has been used for general purposes, the American Experience Table, shows a life expectancy of 10.54 years for her. (R. 46, 118.) These figures are little more than the expectancy of 10.46 years shown by the table that the Commissioner used, and this confirms the view that such expectancy is not out of line with that shown by other tables that are used for general purposes as distinguished from those like the 1937 Standard Annuity Table which is not based upon general experience and is confined to the experience of a select group. In the circumstances we submit that the taxpayer has wholly failed in his effort to attack the table that the Commissioner used, and we further submit that it has not been shown to be so obsolete that it should no longer be used, and certainly taxpayer has failed to offer any adequate substitute.

¹ Waites testified as follows (R. 125):

Q. Mr. Waites, isn't it true that annuitants as a group are a select class of risks? By that I mean that the experience that insurance companies have had with annuitants and with the mortality rate of annuitants is not the same experience that you may have with the average run of persons, in that people who buy annuities are convinced that they will probably at least live if not outlive their life expectancy.

A. Yes, that is why they load their annuity rate so much, because they realize that the person is selecting against them.

The taxpayer says (Br. 24) that the Tax Court had no right to ignore the testimony of Mr. Waites with respect to the 1937 Standard Annuity Mortality Table. But it is clear from the findings of fact and opinion of the Tax Court that it did not ignore such testimony. It gave it consideration and concluded, as above pointed out, that the 1937 table is inapplicable in the circumstances of this case. Certainly the Tax Court was not obliged to accept the testimony of taxpayer's expert here, and cases such as *Belridge Oil Co. v. Commissioner*, 85 F.2d 762 (C. A. 9th), are in harmony with that view. The testimony of taxpayer's expert is at variance with the established practice of the Bureau in cases of this type and for the reasons given above and in the Tax Court's opinion we submit such practice is reasonable and in accordance with law.

In the light of the foregoing, we submit that the Tax Court made no error in upholding the use of the mortality table in the instant case.

It remains to consider the taxpayer's further contention that the Commissioner and the Tax Court failed to take into consideration the proper factor for quarterly payments. In this connection the Tax Court succinctly said (R. 56-57):

Even greater weakness pervades petitioner's argument as to the proper factor for quarterly payments. The actuarial expert testified that the factor respondent used was proper if only an annuity for a term certain were involved, but was not correct if the annuity were for life. He testified further that the value of a life annuity, payable quarterly is less than the value of an annuity certain, payable quarterly, for a term equal to the annuitant's life expectancy. Yet the factor petitioner urged and the method of its application lead to a higher value for a life annuity. This discrepancy could not be adequately explained by petitioner, nor was there any significant evidence as to the derivation

of the factor it sought to have us apply. Petitioner's view cannot be sustained. *Estelle May Affelder, supra.*

Taxpayer criticizes (Br. 29-40) the views of the Tax Court in this connection but does not adequately or satisfactorily explain away the discrepancy in Mr. Waites' testimony which the Tax Court noted. The testimony of Mr. Waites is opposed to the end result of its computation, and the theory advanced does not logically support the mathematical result reached. Indeed, they are plainly contradictory. Hence there is no basis for upsetting the factor which is included in the regulations,² and, we submit, it should be accepted here as it was in the Tax Court.

The taxpayer makes a peculiar alternative argument (Br. 40-44) to the effect that even though the 1937 table be considered inapplicable and the taxpayer's quarterly factor be considered wrong, still the action of the Commissioner and the Tax Court was arbitrary and invalid within the rule of *Helvering v. Taylor*, 293 U. S. 507 and the case should be remanded to the Tax Court for further hearing with the burden of proof placed on the Commissioner. Of course *Helvering v. Taylor*, with which this Court is familiar, is not applicable here because the action of the Commissioner and the Tax Court was not arbitrary and invalid but based upon the settled practice in cases of this character. Moreover, even where a case is remanded for a new determination under the rule of the *Taylor* case, the Commissioner does not have the burden of proof with respect to that determination which is presumptively correct and the taxpayer has the burden of showing it to be wrong.

² See Treasury Regulations 80 (1937 ed.), Art. 10; Treasury Regulations 105, Sec. 81.10.

See also Gift Tax Regulations: Treasury Regulations 108, Sec. 819(f).

Cf. *Helvering v. Gowran*, 302 U. S. 238, 245-247; *Honmel v. Helvering*, 312 U. S. 552, 560. There is no merit to taxpayer's argument and it should be rejected by the Court.

In view of all the foregoing considerations, we submit that the decision of the Tax Court in the instant case was in accord with the law, sustained by the evidence and should therefore be permitted to stand.

CONCLUSION

The decision of the Tax Court should be affirmed.

Respectfully submitted,

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AUGUST, 1949.

APPENDIX

Internal Revenue Code:³

SEC. 811. GROSS ESTATE.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

* * * * *

(d) *Revocable Transfers*—

* * * * *

(2) *Transfers on or Prior to June 22, 1936.*—

To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death except in case of a bona fide sale for an adequate and full consideration in money or money's worth.

* * * * *

(26 U.S.C. 1946 ed., Sec. 811.)

Treasury Regulations 105, promulgated under the Internal Revenue Code:

SEC. 81.10. *Valuation of property.*—

* * * * *

(i) *Annuities, life, remainder, and reversionary interests.*—(1) If the executor adopts the option set forth in section 81.11, any annuity, life, re-

³ While the taxpayer now concedes taxability under Sec. 811 (d) (2) of the Internal Revenue Code (Br. 3, Appendix to Br. p. 1) so there is no question before this Court with regard thereto, nevertheless it seems appropriate for us to set out these basic statutory provisions for the convenience of the Court in case it wishes to refer to them.

mainder, or reversionary interest includible in the gross estate should be valued as of the date of the decedent's death in accordance with the provisions of this section and then such value should be adjusted as explained in section 81.11 for any difference in value between the date of death and the applicable subsequent date due to causes other than mere lapse of time. If the executor does not adopt the option set forth in section 81.11, the value of any such interest should be computed as herein after prescribed without such further adjustment for any decrease or increase in the value of the property subsequent to the date of death.

(2) The value of an annuity contract issued by a company regularly engaged in the selling of contracts of that character is established through the sale by that company of comparable contracts.

(3) All other future payments are to be discounted upon the basis of compound interest at the rate of 4 per cent a year. If the time of payment or of payments is dependent upon the continuation of or upon the termination of a life or of lives, the Actuaries' or Combined Experience Table of Mortality, as extended, and established actuarial principles are to be used in the computation of the present worth. For the purpose of the computation the age of a person is to be taken as the age of that person at his nearest birthday. Table A, a part of this section, gives factors applicable to a case in which only one life is involved. (See paragraphs (4) to (8), inclusive.) Table B, a part of this section, gives factors applicable to a case in which only a term-certain is involved. (See paragraphs (9) to (11), inclusive.) If the time of payment or of payments is dependent upon the continuation of, or termination of more than one life, or there is a term-certain concurrent with one or more lives, a special computation in accordance with the first two sentences of this paragraph is necessary. A case requiring a special computation may be stated to the Commissioner who will fur

nish the applicable factor, provided such request is made sufficiently in advance of the due date of the return. Such request must fully disclose all relevant facts. The date of birth of each person, the duration of whose life may affect the value of the interest, should be established by affidavit.

(4) If the decedent had a remainder interest in property subject to the life estate of another, the present worth of the remainder interest at the time of death should be obtained by multiplying the value of the property at the time of death by the figure in column 3 of Table A opposite the number of years nearest to the actual age of the life tenant.

Example. The decedent was entitled to receive property worth \$50,000 upon the death of his elder brother, to whom the income for life had been bequeathed. The brother at the time of the decedent's death was 31 years 5 months old. By reference to Table A, it is found that the figure in column 3, opposite 31 years, is 0.31262. The present worth of the remainder interest at the date of death is, therefore, \$15,631 (\$50,000 multiplied by 0.31262).

(5) In case the decedent was entitled to receive an annuity of a definite amount during the lifetime of another person, payable at the end of annual periods, the present worth at the time of the decedent's death must be computed upon the basis of the value of a life annuity at the age of the other person. The amount payable annually should be multiplied by the figure in column 2 of Table A opposite the number of years in column 1 nearest to the actual age of the other person.

Example. The decedent received under the terms of his father's will an annuity of \$10,000 for the life of his elder brother. The brother at the decedent's death was 40 years 8 months old. By reference to Table A, the figure in column 2 opposite 41 years, the number nearest to the brother's actual age, is found to be 14,86102. The present worth of the annuity at the date of the decedent's death is, therefore, \$148,610.20.

(6) In the case of an annuity under which the decedent was entitled to receive during the life of another person, or to receive payments at the end of each semiannual, quarterly, or monthly period, the value of the annuity is to be determined by multiplying the aggregate amount to be paid within a year by the figure in Column 2 of Table A opposite the number of years in column 1 nearest the actual age of the person whose life measures the duration of the annuity, and then multiplying the product by 1.01820 for monthly payments, by 1.01488 for quarterly payments, or by 1.00990 for semiannual payments.

Example. If, in the example given in paragraph (5), the annuity is payable in semiannual installments of \$5,000 at the end of each semiannual period, the aggregate annual amount, \$10,000, should be multiplied by the factor 14.86102, and the product should be multiplied by 1.00990. The present worth of the annuity at the date of death is, therefore, \$150,081.44 ($\$10,000 \times 14.86102 \times 1.00990$).

(7) If the first payment of an annuity for the life of an individual is to be paid at once, the value of the annuity is the sum of the first payment plus the present worth of a similar annuity, the first payment of which is not to be made until the end of the first period.

Example. The decedent was entitled to receive an annuity of \$50 a month payable during the life of another person. The decedent died on the day a payment was due. At the date of the decedent's death, the person whose life measures the duration of the annuity was 50 years of age. The value of the annuity at the date of decedent's death is \$50 plus the product of $\$50 \times 12 \times 12.47032$ (see Table A) $\times 1.01820$ (see preceding paragraph (6)), or \$7,668.38 [$\50 plus $(\$50 \times 12 \times 12.47032 \times 1.01820)$].

(8) If the decedent was entitled to receive the entire income of certain property during the life of another person, or was entitled to the use of non-income-producing property during the life of another person, a hypothetical annuity at a rate of

4 per cent of the value of the property should be made the basis of the calculation. A provision for the payment of income in semiannual, quarterly, or monthly installments does not affect the value to be assigned to the life interest.

Example. The decedent was entitled to receive the income from a fund of \$100,000 during the life of a person 41 years old. The value of a hypothetical annuity of \$4,000, dependent upon the life of such a person, is indicated by the table to be \$59,444.08 (\$4,000 multiplied by 14.86102).

(9) If the decedent was entitled to receive property at the end of a specified number of years, Table B or an extension thereof should be used.

Example. The decedent, who was entitled to receive \$100,000 at a certain date, died 30 years prior to such date. The value of his right is the product of \$100,000 multiplied by 0.308319, the factor in column 3, Table B, opposite 30 years in column 1.

(10) In the case of an annuity under which the decedent was entitled during a term-certain to receive payments at the end of each semiannual, quarterly, or monthly period, the value of the annuity is to be determined by multiplying the aggregate amount to be paid within a year by the applicable factor in column 2 of Table B and the product is to be multiplied by 1.01820 for monthly payments, by 1.01488 for quarterly payments, or by 1.00990 for semiannual payments.

Example. The decedent was an annuitant for a term-certain, being entitled to \$1,000 annually payable in installments of \$500 at the end of each semiannual period. A semiannual payment of \$500 had been made just before the death of the decedent and there remained 20 payments to be made over a period of 10 years. The value of the annuity as of the date of the decedent's death is the product of \$500 x 2 x 8.11089 (see Table B) x 1.00990, or \$8,191.19.

(11) If the first payment of an annuity for a definite number of years is to be paid at once, the applicable factor is the product of the factor shown

in Table B multiplied by 1.02154 for monthly payments, by 1.02488 for quarterly payments, by 1.02990 for semiannual payments, or by 1.04 for annual payments.

Example. The decedent was the beneficiary of an annuity of \$50 a month. On the day a payment was due, the decedent died. There were 300 payments to be made, including the payment due. The value of the annuity as of the date of decedent's death is the product of $\$50 \times 12 \times 15.62208$ (see Table B) $\times 1.02154$, or \$9,575.15 ($\$50 \times 12 \times 15.62208 \times 1.02154$).

Table A and table B omitted; they are set out in the Appendix to the taxpayer's brief.